IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA ex rel.
CORI RIGSBY and KERRI RIGSBY — RELATORS/COUNTER-DEFENDANTS

v. — CASE NO. 1:06cv433-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY — DEFENDANT/COUNTER-PLAINTIFF

and

HAAG ENGINEERING CO. — DEFENDANT

STATE FARM'S NOTICE OF INTERVENING AUTHORITY REGARDING [738] RIGSBYS' MOTION FOR RECONSIDERATION OF SCOPE OF PROCEEDINGS IN LIGHT OF ADDITIONAL EVIDENCE ADDUCED IN DISCOVERY; [734] STATE FARM'S MOTION FOR SUMMARY JUDGMENT; AND [736] STATE FARM'S MOTION FOR SUMMARY JUDGMENT ON THE CLAIMS OF CORI RIGSBY

Defendant/Counter-Plaintiff State Farm Fire and Casualty Company ("State Farm"), hereby gives notice to the Court, the Clerk and to counsel, of the following intervening authority. State Farm would show:

1. On January 24, 2011, United States District Judge Sarah S. Vance issued her Order and Reasons, ([886] in *United States of America ex rel. Branch Consultants, L.L.C. v. Allstate Insurance Co., et. al.*; No. 06-4091 (E.D. La. Jan. 24, 2011)) ("Opinion"), Ex. A hereto.

2. In her Opinion, Judge Vance granted each of the defendants' motions to dismiss and/or motions for summary judgment, dismissing the case in its entirety.

3. On January 25, 2011, Judge Vance issued her Judgment dismissing the case, ([887] in *United States of America ex rel. Branch Consultants, L.L.C. v. Allstate Insurance Co., et. al.*; No. 06-4091 (E.D. La. Jan. 25, 2011)), Ex. B hereto.

4. Judge Vance's Opinion is directly relevant to the following motions now pending before this Court:

(1) [738] Rigsbys' Motion for Reconsideration of Scope of Proceedings in Light of Additional Evidence Adduced in Discovery ([738], [740], [750], [765], [766] & [783]);

(2) [734] State Farm's Motion for Summary Judgment ([734], [735], [767], [780]); and

(3) [736] State Farm's Motion for Summary Judgment on the Claims of Cori Rigsby (736], [737], [763], [777]).

Motion for Reconsideration

5. The Rigsbys contend in their motion for reconsideration ([738]) that the court should expand and restart discovery, arguing that "a trial on the McIntosh claim cannot resolve this entire matter because the scheme – not the McIntosh claim – is the threshold issue in this litigation." ([740] at 5 (emphasis omitted).) *Branch* proves this to be false.

6. The relator in *Branch* proffered two "exemplar" properties to support its "loss-shifting" claim against Fidelity under the False Claims Act ("FCA"). *Branch*, slip op. at 50-51. But, the court held, "[t]he purported exemplars simply do not support Branch's loss-shifting claim against Fidelity." *Id.* at 52. Because the court's subject matter jurisdiction "as to the loss-shifting scheme was based upon the examples of fraud Branch set out in its complaint," the court "lack[ed] jurisdiction over that complaint," thereby mandating dismissal. *Id.* at 50-58.

7. As in *Branch*, if the McIntosh flood claim – the only alleged false claim proffered by the Rigsbys – does not support the Rigsbys' FCA claim against State Farm, its entire case must be dismissed. Since the McIntosh flood claim – and ***not*** the Rigsbys' purported scheme – is the threshold issue in this litigation, the Rigsbys' present bid to expand and restart discovery should be denied.

Motion for Summary Judgment

8. For the same reasons, *Branch* demonstrates that State Farm's motion for summary judgment ([734]) should be granted. As explained in State Farm's briefing ([734], [735], [780]), the record establishes conclusively that the McIntosh house sustained substantial flood damage that easily justified the payment of flood policy limits. Because, as per *Branch*, the question of whether the

McIntosh claim was false is a dispositive threshold issue, the fact that the McIntosh flood claim was not false requires dismissal of the Rigsbys' FCA claim.

Motion for Summary Judgment on the Claims of Cori Rigsby

9. *Branch* also shows that Cori Rigsby does not qualify as an original source. *Branch* explains that a relator "must have direct and independent knowledge of the core information underlying its allegations." *Branch*, slip op. at 62. The court held that because "none of Branch's purported examples actually supports its loss-shifting claim [as to Fidelity], it cannot be considered an original source as to that claim." *Id.* at 56. "Without the exemplar properties, Branch ***cannot be considered an original source*** of the loss-shifting scheme alleged in the original complaint." *Id.* at 53 (emphasis added).

10. Here, the Rigsbys freely admit that Cori Rigsby "never has asserted direct and independent knowledge of the McIntosh claim" ([763] at 3) – the ***only*** example of an alleged false claim proffered by the Rigsbys. Since Cori Rigsby has not satisfied her burden of proving that this Court has subject matter jurisdiction over her claims, her claims must be dismissed.

11. State Farm hereby files copies of Judge Vance's Opinion and Judgment in the record and respectfully brings them to the Court's attention as authority relevant to the aforementioned motions.

This the 25th day of January, 2011.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

By: */s/ E. Barney Robinson III* (MSB # 094sdu32)
E. Barney Robinson III (MSB # 09432)
Robert C. Galloway (MSB # 4388)
Jeffrey A. Walker (MSB # 6879)
Benjamin M. Watson (MSB # 100078)
Amanda B. Barbour (MSB # 99119)

ITS ATTORNEYS

OF COUNSEL:

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC
Post Office Drawer 4248
Gulfport, MS 39502
(P) (228) 575-3019
(E) bob.galloway@butlersnow.com

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC
200 Renaissance at Colony Park, Suite 1400
1020 Highland Colony Parkway (39157)
Post Office Box 6010
Ridgeland, MS 39158-6010
(P) (601) 948-5711
(F) (601) 985-4500
(E) jeff.walker@butlersnow.com
(E) barney.robinson@butlersnow.com
(E) ben.watson@butlersnow.com
(E) amanda.barbour@butlersnow.com

Michael B. Beers (ASB-4992-S80M), PHV
BEERS, ANDERSON, JACKSON, PATTY & FAWAL, P.C.
Post Office Box 1988
250 Commerce Street, Suite 100 (36104)
Montgomery, AL 36102
(P) (334) 834-5311
(F) (334) 834-5362
(E) mbeers@beersanderson.com

PRO HAC VICE

CERTIFICATE OF SERVICE

I, E. Barney Robinson III, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the CM/ECF system:

C. Maison Heidelberg
Ginny Y. Kennedy
MAISON HEIDELBERG P.A.
795 Woodlands Parkway, Suite 220
Ridgeland, MS 39157
(P) (601) 351-3333
(F) (601) 956-2090
(E) maison@heidlebergpa.com

August J. Matteis, Jr.
Craig J. Litherland
Benjamin R. Davidson
GILBERT LLP
11 New York Avenue, NW
Suite 700
Washington, DC 20005
(E) matteisa@gotofirm.com
(E) litherlandc@gotofirm.com
(E) davidsonb@gotofirm.com

COUNSEL FOR CORI RIGSBY AND KERRI RIGSBY

Jeffrey S. Bucholtz
Joyce R. Branda
Patricia R. Davis
Jay D. Majors
UNITED STATES DEPARTMENT OF JUSTICE
Civil Division
P.O. Box 261
Ben Franklin Station
Washington, DC 20044
(P) (202) 307-0264
(F) (202) 514-0280

Alfred B. Jernigan, Jr.
Felicia C. Adams
UNITED STATES ATTORNEY'S OFFICE
Southern District of Mississippi
188 East Capitol Street, Suite 500
Jackson, MS 39201
(P) (601) 965-4480
(F) (601) 965-4409

ATTORNEYS FOR THE UNITED STATES

Larry G. Canada
Kathryn Breard Platt
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH
2510 14th Street, Suite 910
Gulfport, MS 39501
lcanada@gjtbs.com
kplatt@gjtbs.com

ATTORNEYS FOR HAAG ENGINEERING CO.

This the 25th day of January, 2011.

/s/ *E. Barney Robinson III* (MSB # 09432)
E. Barney Robinson III (MSB # 09432)